IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 44 of 2005

DATE OF DECISION: 3.10.2007

The Commissioner of Income Tax, Faridabad

…Appellant

Versus

M/s Motorola India Ltd.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,
for the appellant-revenue.

Mr. C.S. Aggarwal, Sr. Advocate, with
Mr. Deepak Chopra, Advocate,
for the respondent-assessee.

M.M. KUMAR, J.

This order shall dispose of I.T.A. Nos. 44 and 45 of 2005 as common questions of law and facts are involved. However, facts are being referred from I.T.A. No. 44 of 2005. The appeal has been filed under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), against order dated 29.6.2004, passed by the Income Tax Appellate Tribunal, Bangalore, (for brevity, 'the Tribunal), in I.T.A. No. 136(Bang)/2000, in respect of assessment year 1996-97. It is claimed that the following substantial questions of law would arise for determination of this Court:-

a. Whether the Tribunal has erred in law in holding that the order of the Assessing Officer was not prejudicial and erroneous to the interest of the revenue where in the relief under section 80HHC of the Income-tax Act, 1961, was allowed on the

total income without adjusting the brought forward loss and unabsorbed depreciation of the earlier years?

b. Whether the Tribunal has erred in law in vacating the order under Section 263 of the Income-tax Act, 1961?

Brief facts of the case are that on 29.11.1996 the assessee filed its return of income before the Assessing Officer-cum-Joint Commissioner of Income Tax (Asstt.), Special Range-I, Bangalore, declaring its total income of Rs. 3,50,30,300/-, in respect of assessment year 1996-97 (A-I). Thereafter a revised return was filed on 12.12.1996 in which declared income was the same. The return was processed under Section 143(1)(a) of the Act and after taking up the case for scrutiny a notice under Section 143(2) of the Act was issued. The assessee determined its income after adjusting the brought forward loss and unabsorbed depreciation of earlier years amounting to Rs. 16,76,69,984/- as against the current income of Rs. 82,16,36,146/-. The assessee also claimed deduction under Section 80HHC of the Act out of its income of Rs. 44,52,56,153/- earned from export business. On 31.3.1999, assessment under Section 143 (3) of the Act was completed and the Assessing Officer disallowed exchange loss of Rs. 71,24,140/- and assessed the income at Rs. 4,21,54,440/-.

On 30.12.1999, the Commissioner of Income Tax, Bangalore, passed an order under Section 263 of the Act, and held that relief under Section 80HHC of the Act can be allowed on the profits of current year as reduced by the carried forward business loss

and unabsorbed depreciation. It was further observed that the Assessing Officer has calculated the deduction under Section 80HHC of the Act before setting off the unabsorbed loss and depreciation of earlier years against the business profit of current year, which resulted in excess relief to the assessee. The order of the Assessing Officer was found to be erroneous and against the interest of the revenue. Accordingly, the Commissioner of Income Tax directed the Assessing Officer to modify the assessment. On 9.3.2000, the Assessing Officer passed fresh order and deduction of Rs. 36,10,68,000/- as againt Rs. 44,52,56,153/-, under Section 80HHC of the Act was allowed.

The assessee filed appeals before the Tribunal at Bangalore against the order dated 30.12.1999 passed by the Commissioner of Income Tax under Section 263 of the Act as well as before the CIT (Appeals) against the order dated 9.3.2000 passed by the Assessing Officer. On 30.5.2002, the CIT (A) dismissed the appeal of the assessee by observing that the Assessing Officer has acted in accordance with the directions given by the Commissioner of Income Tax, Bangalore. Against the order dated 30.5.2002, the assessee further filed an appeal before the Tribunal and by a single order dated 29.6.2004, the Tribunal has allowed both the appeals of the assessee.

According to the assessee it is having eligible units and also several other ineligible units. While computing profits of the eligible unit for the purpose of deduction – working out relief under Section 80-HHC of the Act, it is the eligible unit alone which has to be seen. After having computed profits of the industrial undertaking, deduction under Section 80-HHC of the Act has to be computed and

thereafter other provisions like set off of unabsorbed depreciation and the carried forward depreciation were to arise based on the principle laid down by the Karnataka High Court in the case of **CIT v. HMT Ltd., 199 ITR 235,** and also the decision of the Bombay High Court in the case of **CIT v. Shirke Construction Equipment Ltd., 246 ITR 429 (Bom)**. In the light of these decisions, the assessee has, *inter alia*, claimed that order of the Assessing Officer cannot be considered as erroneous or prejudicial to the interest of Revenue. However, we need not to go into merit of the controversy in view of a preliminary objection canvassed by the assessee.

Mr. C.S. Aggarwal, learned Senior counsel at the outset has raised a preliminary objection concerning maintainability of these appeals and also to territorial jurisdiction of this Court to entertain the instant appeals. Learned counsel has maintained that the assessee-respondent was incorporated on 23.6.1989 under the Companies Act, 1956 and it was being assessed till the assessment year 2001-02 at Bangalore by the Joint Commissioner of Income Tax, Special Range-I, Bangalore, who has territorial jurisdiction over the assessee-respondent. On facts, he has submitted that the Joint Commissioner of Income Tax, Special Range-I, Bangalore, vide order dated 9.3.2000, given effect to the order of the Commissioner of Income Tax, Bangalore, when appeal of the assessee-respondent before the Bangalore Bench of the Tribunal was pending. The aforementioned order was not served on the assessee-respondent till December, 2001. On receipt of the order, the assessee-respondent filed an appeal on 8.1.2002 before the Commissioner of Income Tax (Appeals)-III, Bangalore, which led to the passing of order dated 30.5.2002. In

pursuance to notification No. F. No. 63-Ad (AT/97, dated 16.9.1997, as amended by notifications bearing Nos. F. No. 63-Ad(AT)/2001, dated 19.10.2001 and F. No. 63-Ad(AT)/2001, dated 29.5.2001, the appeals were to be filed at Bangalore, as per the standing order of the President, who has constituted the benches to hear the appeals under Section 255(1) of the Act. He has emphasised that the crucial factor for determining the territorial jurisdiction of the Tribunal as well as that of the High Court to hear the appeals is the Assessing Officer and in this case the assessment was made by the Joint Commissioner of Income Tax, Special Range-I, Bangalore. The appeals were disposed of by the Bangalore Bench of the Tribunal on 29.6.2004 (A-V). He has further submitted that when the arguments were heard by the Tribunal at Bangalore then no objection was raised by the revenue-appellant that the Assessing Officer of the assessee-respondent is at Gurgaon and the departmental representative was representing the Assessing Officer at Gurgaon. Therefore, the plea of the revenue-appellant that the jurisdiction of the assessee stood transferred is without any consequence. In any case, learned counsel has submitted that communication from the Assessing Officer at Gurgaon vide letter dated 9.6.2004, if assumed to be passed under Section 127 of the Act, cannot be construed to mean that it would relate to the assessment year 1996-97 because the assessment in respect of that year was framed by the Assessing Officer at Bangalore. In that regard Mr. Aggarwal has placed reliance on a judgment of this Court in the case of **Lt. Col. Paramjit Singh v. C.I.T., (1996) 220 ITR 446**. He has then relied upon on the standing order of the President, ITAT, dated 16.9.1997, issued in pursuance of sub-rule (1) of Rule 4 of the

Income-tax (Appellate Tribunal) Rules, 1963 (for brevity, 'the Rules') and supported his submission by relying upon the judgments of Delhi High Court in the cases of **Seth Banarsi Dass Gupta v. C.I.T., (1978) 113 ITR 817 (Del.)** and **Suresh Desai & Associates v. C.I.T., (1998) 230 ITR 912 (Del.)**; and a judgment of Patna High Court in the case of **C.I.T. v. Justice S.B. Sinha, 237 ITR 268 (Pat).**

On merit also learned counsel for the assessee-respondent has made submissions but in view of the preliminary objection raised, we are not opining on merit and would prefer to first decide the preliminary objection.

Mr. Yogesh Putney, learned counsel for the revenue-appellant has submitted that the preliminary objection is devoid of any merit and is liable to be rejected. According to the learned counsel, the assessee-respondent had requested for transfer of its area from Bangalore to Gurgaon on 2.1.2002 on the ground that the registered office of the company has shifted to Gurgaon. According to the learned counsel, applications were again filed on 5.2.2002 and 25.11.2002 and records were accordingly transferred from Bangalore to Gurgaon, vide order dated 20.5.2005, under Section 127 of the Act, which specifically stipulate the transfer of jurisdiction of the assessee-respondent from Bangalore to the Deputy Commissioner of Income Tax, Gurgaon Circle, Gurgaon. A copy of the order has been placed on record as Mark 'A'.

Mr. Putney has placed reliance on the explanation to Section 127 of the Act to argue that all proceedings under the Act in respect of any order, which may be pending on the date of such order or direction or which may have been completed on or before such

date would be covered by the expression '*case*' as used in Section 120 of the Act. Therefore, the expression '*case*' in Section 127 of the Act should also be construed in the same manner. Learned counsel has also placed reliance on the definition of expression '*High Court*' used in Section 269 of the Act. He has further invited our attention to Note-4 of Rule 4 of the standing order under the Rules to argue that jurisdiction of the Bench is required to be determined not by the place of business or residence of the assessee but by the location of the office of the Assessing Officer, which in the present case would be at Gurgaon after the transfer of the case under Section 127 of the Act. He has emphasised that this Court has jurisdiction over the assessee-respondent because its Head Office is within territorial area of this Court. The argument is that jurisdiction of this Court is not to be determined on the basis of the place of passing of assessment order by the Assessing Officer but the Assessing Officer who exercises jurisdiction over the assessee after the transfer of the case.

We have thoughtfully considered the submissions made by the learned counsel for the parties and have also gone through the judgments and notifications on which reliance has been placed. It is undisputed that the returns dated 29.11.1996 and 12.12.1996 were filed by the assessee-respondent at Bangalore and the assessment order dated 31.3.1999 was passed by the Assessing Officer at Bangalore (A-I). Even the revisional order in exercise of jurisdiction under Section 263 of the Act was passed by the Commissioner of Income Tax at Bangalore. All other orders have been passed by the revenue officers at Bangalore. Even the appeals before the Tribunal were decided on 29.6.2004 at Bangalore. According to Note 4 under

sub-rule (1) of Rule 4 of the Rules, it has been stipulated that ordinary jurisdiction of the Bench is to be determined not by the business or residence of the assessee but by the location of the office of the Assessing Officer. This statutory guidance is available from the standing order dated 16.9.1997, passed under sub-rule (1) of Rule 4 of the Rules.

Moreover, the aforementioned legal position has been laid down by the Delhi High Court in the cases of Seth Banarsi Dass Gupta (supra) and Suresh Desai & Associates (supra). In the case of Suresh Desai & Associates (supra), assessment in respect of assessment year 1980-81 was framed by the Assessing Officer at Bombay, which was in pursuance to a search and seizure action conducted by the Directorate of Enforcement under Section 132 of the Act. The assessee had also filed an appeal before the CIT (A) at Bombay, who had directed the Assessing Officer to afford the assessee an opportunity of hearing and then again complete the assessment in accordance with law. The Deputy Commissioner (Assessment) Bombay then passed an order of assessment. Again an appeal was preferred which was decided by the CIT (A) at Bombay. However, the assessee and the revenue preferred further appeals before the Delhi Bench of the Tribunal. The assessee filed an application under Section 256(1) of the Act citing few questions and sought reference to the High Court. The application was dismissed by the Tribunal at Bombay with the observation that no referable question arose out of the order of the Tribunal. Thereafter an application was filed before the High Court of Delhi, under Section 256(2) of the Act and a preliminary objection was raised by the

revenue that the High Court at Delhi did not have jurisdiction and the application could lie only before the High Court at Bombay. Placing reliance on the judgment in the case of Seth Banarsi Dass Gupta (supra), the Division Bench culled out the following reasoning to sustain the preliminary objection:-

> " (1) Section 64 which has relevance for determining the jurisdiction of the Assessing Officer by reference to the place where the assessee carries on business, profession or vacation, has no relevance for determining the jurisdiction of the appellate authority/Tribunal;
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> (ii) In considering the question as to the High Court to which a Bench having jurisdiction over more than one State has to make a reference, the basis adopted for determining the jurisdiction of the Bench of the Tribunal would be more appropriate than the basis adopted for determining the jurisdiction of the Income-tax Officer;
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> (iii) It would be quite appropriate for the Bench to refer the question of law arising out of its own order in appeal to the High Court of the State from which the appeal had come.
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> (iv) The suggestion that the place of the location of the Bench which heard and determines an appeal may be adopted as the basis for the determination of the jurisdiction of the High Court to which the question of law arising out of the order should be referred cannot be

accepted. Reference cannot be made to the High Court of Delhi merely because the Delhi Bench of the Tribunal situated within the territorial jurisdiction of the High Court heard the appeal."

The Division Bench also placed reliance on another Division Bench judgment of Delhi High Court in the case of **Birla Cotton, Spinning and Weaving Mills Ltd. v. C.I.T., (1980) 123 ITR 354**. The Division Bench also held that territorial jurisdiction of the Tribunal extends over several States though each of such State has its own High Court. The decision of the High Courts are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territory in relation to which it exercises jurisdiction but it does not extend beyond its territorial jurisdiction. In other words, the decision of one High Court is not a binding precedent for another High Court or for Courts or Tribunals outside its territorial jurisdiction. The doctrine of precedents and rule of binding efficacy of law laid down by the High Court within its territorial jurisdiction, the questions of law arising out of decision in a reference, has to be determined by the High Court which exercises territorial jurisdiction over the situs of the Assessing Officer and if it was otherwise then it would result in serious anomalies as an assessee affected by an assessment order at Bombay may invoke the jurisdiction of Delhi High Court to take advantage of a suitable decision taken by it. Thus, such an assessee may avoid application of inconvenient law laid down by the jurisdictional High Court of Bombay. On the basis of the aforementioned reasoning, the Division Bench sustained the objection that the jurisdiction to entertain the

application under sub-section (1) and (2) of Section 256 of the Act vested in the High Court of Bombay and not of Delhi. We are in respectful agreement with the aforementioned reasoning of the Delhi High Court. Accordingly, we hold that the preliminary objection raised by learned counsel for the assessee-respondent is sustainable.

It is true that transfer order under Section 127 of the Act has been passed on 20.5.2005 but it would not affect the assessment framed by the Assessing Officer in respect of the assessment year 1996-97. The reliance of the revenue on explanation to Section 127 of the Act with regard to the meaning of expression '*case*' is wholly misplaced and is liable to be rejected because Section 120 of the Act does not deal with jurisdiction of the Tribunal or the High Court. It is appropriate to make a reference to Sections 120 and 127 along with Explanation, which thus reads:-

> "120. (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.
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> *Explanation.*- For the removal of doubts, it is hereby declared that any income-tax authority, being an authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorites who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely:-

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

(d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein, -

(a) authorise any Director General or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

(b) empower the Director General or Chief Commissioner or Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or

classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Deputy Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall

exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification."

x x x x x

"127. (1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether

with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,-

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement,then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.-In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

A conjoint reading of the aforementioned provisions makes it evident that the Director General or Chief Commissioner or Commissioner is empowered to transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer. It also deals with the procedure when the case is transferred from one Assessing Officer subordinate to a Director General or Chief

Commissioner or Commissioner to an Assessing Officer who is not subordinate to the same Director General, Chief Commissioner or Commissioner. The aforementioned situation and the definition of expression '*case*' in relation to jurisdiction of an Assessing Officer is quite understandable but it has got nothing to do with the territorial jurisdiction of the Tribunal or High Courts merely because Section 127 of the Act dealing with transfer has been incorporated in the same chapter. Therefore, the argument raised is completely devoid of substance and we have no hesitation to reject the same.

In view of the above, the appeal is dismissed by sustaining the preliminary objection that this Court has no territorial jurisdiction over an order passed by the Assessing Officer at Bangalore. Accordingly, these appeals are returned to the revenue-appellant for their filing before the competent court of jurisdiction in accordance with law.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 3, 2007
Pkapoor

FIT FOR INDEXING